## APPENDIX A

DAYTON BAR ASSOCIATION ET AL. v. HERZOG.

[Cite as Dayton Bar Assn. v. Herzog (1982), 70 Ohio St. 2d 261.]

*Attorneys at law—Misconduct—Permanent disbarment—Acts warranting—Soliciting professional employment by mail.*

(D.D. No. 82-3—Decided June 23, 1982.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Relators, Dayton Bar Association ("DBA") and the Disciplinary Counsel of the Supreme Court of Ohio ("Disciplinary Counsel"), filed a complaint against respondent. Harold J. T. Herzog, with the Board of Commissioners on Grievances and Discipline ("board"). DBA asserted three claims of misconduct, and the Disciplinary Counsel added a fourth. The board held a private hearing in Dayton on November 5 and 6, 1981. A summary of the evidence and stipulations before the board follows.

As to the first claim, respondent collected funds on behalf of a client corporation. He told the client that he would reimburse it, but did not do so until after a complaint was filed with the DBA. Prior to payment, however, respondent deposited the funds in his trust account and wrote checks on that account to his ex-wife, his daughter, the telephone company and "cash." During much of this time, the account balance was less than that owed to this client.

The board found that this conduct was in violation of DR 9-102 (B) (4), which requires that a lawyer promptly pay a client those funds the client is entitled to receive.

In a separate claim, respondent had not conducted discovery in a personal injury case, although opposing counsel had deposed his clients, the plaintiffs. At a pretrial, the trial judge informed respondent that, if his clients proved the facts alleged in the complaint, the court would nevertheless have to direct a verdict for the defendants. One of the defense counsel in that case testified that respondent wanted a continuance and was not prepared to go forward on the case. Without his clients' consent, respondent agreed to dismiss the case, because he believed the voluntary dismissal would toll the statute of limitations. Respondent concedes, however, that this belief was in error.

Respondent's clients moved to Columbus. It is disputed whether he informed them of these developments. At the time of the hearing in this case, respondent had not forwarded the papers of these clients to their Columbus counsel as requested.

The board found that this conduct was in violation of DR 6-101 (A) (3), which prohibits a lawyer from neglecting a legal matter entrusted to him.

DBA filed an additional claim for misconduct. The board found, however, that the evidence did not support the claim.

The Disciplinary Counsel also filed a claim because respondent mailed between 500 and 1,000 letters to defendants in Dayton Municipal Court cases which were listed in the "Daily Court Reporter." There were two different form letters used, but each referred to a "new federal law" as a means of forestalling collections and invited the recipients to call respondent's office for an appointment.

The board found that this conduct violated DR 2-103, because respondent directly solicited or attempted to solicit professional employment.

Upon consideration of the prior indefinite suspension of respondent from the practice of law in 1962, his reinstatement in 1975 and the findings of misconduct, the board recommended that respondent be permanently disbarred.

*Mr. Howard P. Krisher, II*, for relator Dayton Bar Assn.

*Mr. Charles W. Kettlewell*, for relator Disciplinary Counsel.

*Messrs, Butler, Cincione, DiCuccio & Dritz* and *Mr. Robert A. Butler*, for respondent.

*Per Curiam.* After an examination and review of the record in this cause, this court concurs with the findings of fact and recommendation of the board of commissioners. Gov. R. V (7) provides in part: "• • • A person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. • • •" In view of respondent's prior indefinite suspension, *Dayton Bar Assn.* v. *Herzog* (1962), 173 Ohio St. 313, and subsequent reinstatement, it is ordered, pursuant to Gov. R. V (7), that respondent be permanently bisbarred from the practice of law.•

*Judgment accordingly.*

CELEBREZZE, C. J., W. BROWN, SWEENEY, LOCHER, HOLMES, C. BROWN and KRUPANSKY, JJ., concur.

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• We note specifically that, in light of Gov. R. V(7), our finding that respondent violated DR 9-102(B)(4) and DR 6-101(A)(3) requires that respondent be permanently disbarred. Therefore, our finding of misconduct as to the solicitation claim does not affect the result. Respondent posits, however, that the holding of the United States

Supreme Court in *In re R.M.J.* (1982), — U.S. —, 71 L.Ed.2d 64, bars any finding of misconduct as to that claim. We disagree and concur with the board's finding that respondent violated DR 2-103.

*In re R.M.J.* differs as to the facts and the law. In that case, the attorney challenged the constitutionality of Missouri's DR 2-101 which limited the content of advertisments. See *In re R.M.J.* (Mo. 1980), 609 S. W. 2d 411, appendix, at 412-413. The attorney in that case also mailed announcement cards to persons other than those listed in Missouri. DR 2-102. As to this latter issue, however, the United States Supreme Court noted: "• • • [W]e deal with a silent record." *In re R.M.J., supra*, at 76.

This case, however, involves violation of DR 2-103, and the record is anything but silent. One of the form letters which the respondent, in this case sent stated: "There is a new federal law that can save your job, car, bank account, stop repossessions and garnishments and gas and electric turn-offs." The other form letter contained a similar statement. Each letter encouraged the reader to call respondent's office for an appointment. This patent solicitation is not the type of constitutionally protected commercial speech discussed in *Bates* v. *State Bar of Arizona* (1977), 433 U.S. 350, rehearing denied, 434 U.S. 881, and *In re R.M.J., supra* (— U.S. ——). Rather, respondent's letters create a "potential for overreaching • • • [and a] need for prophylactic regulation in furtherance of the State's interest in protecting the lay public." *Ohralik* v. *Ohio State Bar Assn.* (1978), 436 U. S. 447, 468, rehearing denied, 439 U. S. 883. In *Ohralik*, the United States Supreme Court upheld the constitutionality of DR 2-103(A) as applied to in-person solicitation of professional employment. DR 2-103, as applied in this case, serves the state's interest in protecting the lay public from mail solicitation of professional employment as well.

## APPENDIX B

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

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CASE No. 395

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In re:
Complaint against:

H. J. T. HERZOG,

Respondent,

DAYTON BAR ASSOCIATION AND
LEONARD J. STERN,
DISCIPLINARY COUNSEL,

Relators.

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(Filed January 29, 1982)

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**Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio**

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This proceeding was held on November 5 and November 6, 1981, in the Court of Appeals Courtroom in the Montgomery County Courts Building, in Dayton, Ohio, by a panel consisting of Thomas J. Manahan, Chairman, Robert

W. Blakemore and Thomas J. Grady. The Dayton Bar Association was represented by Attorney Howard Penn Krisher, II. The Respondent was represented by Attorney Robert Butler of Columbus, Ohio. Charles W. Kettlewell, of the Office of Disciplinary Counsel, by agreement, did not appear for the hearing because of a stipulation of facts of the fourth claim of misconduct, the claim with which he was directly concerned.

At the request of respondent, the hearing was conducted in private.

I. The first claim of misconduct charged that respondent had collected sums of money owing to a client, Hendricks & Son Ready Mix Concrete, but had not notified the client of the collection of the money and had not promptly paid or delivered the funds to the client. A stipulation of many of the facts relating to the four claims of misconduct on the part of this respondent had been entered into prior to the hearing, and a total of fifty-two stipulated exhibits were offered by relator.

The stipulations and exhibits established that respondent had collected, in March of 1979, $806.76 from a customer of his client, Luther Gordon, and that in May of 1979, he had collected $1,280.66 from another customer, Tonkovich. These funds were deposited in respondent's trust account.

Thereafter, on one occasion, Tonkovich was refused credit by the Cement Company because it was believed that he had not paid the bill owing to that company. Respondent was requested to reimburse the client for these funds, stated that he would do so, but did not do so. Eventually, after a complaint was filed with the Dayton Bar Association, respondent, in June of 1980, forwarded these funds to the clients.

The exhibits admitted in evidence established that during the time these funds were supposed to be in the trust

account of respondent, checks were written out of that account to his ex-wife, his daughter, the telephone company, and on numerous occasions, checks to "cash" were written out of the account. During a great part of this time, the balance in the account was not sufficient to cover the funds owed to these two clients.

Respondent's defense was that in the collection business, the client is not always immediately reimbursed, but that periodic accountings are the custom and practice. In addition, respondent stated that the Internal Revenue Service had levied on his trust account, but the evidence disclosed that these levies were not initiated until December of 1979, nine and six months, respectively, after the funds were received, and after requests had been made by the client to forward the funds.

Relator charged that respondent had violated DR 1-102 (A) (6), DR 9-102 (B) (1) and DR 9-102 (B) (4) of the Code of Professional Responsibility. The Board finds no violation of DR 1-102 (A) (6) or DR 9-102 (B) (1), but does find that respondent violated DR 9-102 (B) (4).

II. The second claim of misconduct was that respondent had been retained as counsel by Georgia Louise Carter, to act as attorney for the estate of her deceased husband, Melvin E. Carter. The principal asset of Mr. Carter's estate was the residence property which was held as a tenancy in common with his wife.

The respondent testified that he advised Mrs. Carter to avoid the expense of probate proceedings, because of her limited financial status, and suggested that she wait until she had decided to sell the residence before beginning such proceedings.

Respondent also arranged for an appraisal of the residence to be made at that time.

Thereafter, Mrs. Carter contacted respondent and advised him that she was in a position to sell the residence. Respondent then filed an application to admit the will to probate and letters testamentary were issued to Mrs. Carter and the real estate was sold, leaving a net balance of $19,000.00. Pursuant to respondent's instruction, Mrs. Carter retained $9,500.00 of the balance for herself, and $9,500.00 was deposited into an estate account.

No Certificate of transfer was filed by respondent. Under the terms of Melvin E. Carter's will, his wife was to receive his one-half interest in the real estate.

Respondent did not file an inventory or account in the Melvin Carter estate despite receiving notices to do so by the Probate Court of Montgomery County, Ohio.

Thereafter, Georgia Louise Carter died and her daughter retained Attorney James Mitchell to handle the probate proceedings for that estate. Although Mr. Mitchell made several requests of respondent for documents to assist him in the handling of the estate of Mrs. Carter, respondent did not comply with these requests, until August 29, 1980.

Relator charged respondent with violation of DR 6-101 (A) (3), namely, neglecting a legal matter entrusted to him.

The Board is of the opinion that respondent was discourteous to counsel handling the estate of Mrs. Carter, but that respondent was not guilty of violating the disciplinary rule charged and dismisses the second claim of misconduct.

III. The third claim of misconduct was that respondent had been contacted by a Mr. and Mrs. Robert Bowman relative to a claim for personal injuries arising out of a bicycle accident by Mrs. Bowman. At the time that the original contact was made, respondent was still under

suspension from the practice of law, but thereafter, on May 26, 1976, respondent, then reinstated, filed a complaint in the Common Pleas Court of Montgomery County, Ohio, seeking to reciver damages on behalf of the Bowmans. In the complaint, there were six defendants named, and two were subsequently dismissed.

Evidence, including testimony of one of counsel for one of the defendants in that case, established that respondent conducted no discovery in the form of interrogatories or depositions. Depositions of his clients were taken by opposing counsel.

The case was called for a pretrial conference on the Friday before the scheduled trial date of February 4, 1980. Respondent testified that at the pretrial conference, the judge to whom the case had then been assigned, informed him that even if he established all of the facts alleged in the complaint, he would be obliged to direct a verdict for the defendants. Respondent then agreed to a dismissal of the case, believing that voluntary dismissal would toll the running of the statute of limitations applicable to his clients' claims, which he later conceded was an erroneous belief on his part. There was a disput in the evidence as to whether he reported these developments to his clients who had by this time moved to Columbus, Ohio. Respondent produced a copy of a letter addressed to them, but it was stipulated that if the Bowmans were called to testify as witnesses, they would testify that they did not receive this letter. It was also stipulated that respondent did not obtain the consent of his clients to dismiss this action.

One of the defense counsel in that case, Francis McDaniels, testified that he reported to his client after the pre-trial conference that the trial judge had commented that he thought the case might result in a directed verdict,

that respondent stated that he wanted a continuance of the case and that he was not prepared to go forward with trial of the action.

Counsel for respondent stressed that the liability was very questionable.

In any event, thereafter the Bowmans retained Attorney Barry Wolinetz of Columbus, Ohio to represent them in this matter and so advised respondent. Thereafter, Attorney Wolinetz addressed three letters to respondent asking him to forward file material to him so that he could determine what action should be taken on behalf of the Bowmans. Respondent never responded to these letters and, thereafter, Mr. Wolinetz directed a complaint letter to the Dayton Bar Association. At the time of this hearing, respondent had not forwarded any papers to Mr. Wolinetz and offered no explanation for his failure to do so. Relator charged respondent with violations of DR 6-101 (A) (1) and DR 6-101 (A) (3) of the Code of Professional Responsibility. The Board finds that the evidence does not support the charge that respondent violated DR 6-101 (A) (1), namely, attempting to handle a matter which he was not competent to handle, but does find that he violated DR 6-101 (A) (3), neglecting a legal matter entrusted to him.

IV. The fourth claim of misconduct involved alleged violations of DR 2-101 and DR 2-103 of the Code of Professional Rseponsibility. Gov. R. V., Section (3), grants exclusive authority to the office of Disciplinary Counsel of the Supreme Court of Ohio to investigate and file complaints for violations of those rules.

It was stipulated that on or about February 18 or 19 of 1980, respondent mailed approximately 1000 letters to persons whose names he had taken from the "daily court reporter" and persons who were defendants in lawsuits filed

in collection cases in the Dayton Municipal Court. Copies of these letters are attached to the complaint and marked Exhibits 7 and 8. They advise the addressee that he or she is listed as a defendant in a collection suit and advised of consequences that may result from such a suit. The letter also advises that there are remedies available to prevent these actions being taken against them and that they may learn about these remedies by calling respondent's office. In other words, these letters constitute, in the opinion of the Board, direct solicitation of legal business from specific persons, namely, those listed in the "daily court reporter" as defendants in collection suits.

Counsel for respondent argued that no distinction can be drawn between such solicitation and that done by television or by the yellow pages in the telephone directory.

The Board finds that respondent did not violate DR 2-101, which relates to publicity in general, but believes that respondent's actions do violate DR 2-103, which is captioned "Recommendation of Professional Employment." The Board believes that a distinction can be drawn between direct mail solicitation and solicitation by way of telephone directories or television.

The Board finds that as to the first claim of misconduct, respondent did violate DR 9-102 (B) (4) of the Code of Professional Responsibility in failing to properly pay or deliver to the client as requested by the client, funds in possession of the lawyer which the client is entitled to receive.

The Board finds that the evidence does not support the claimed violation in the second claim for misconduct.

The Board finds as to the third claim of misconduct, that respondent did violate DR 6-101 (A) (3) in that he neglected a legal matter entrusted to him.

As to count four, the Board finds that respondent vio-

lated DR 2-103 in that he directly solicited or attempted to solicit employment.

It is alleged in the complaint filed by the Dayton Bar Association, and was admitted in the evidence before the panel that respondent was indefinitely suspended from the practice of law on April 18, 1962, that a Petition for Reinstatement was refused on January 20, 1972, and that a Petition for Reinstatement was granted on June 19, 1975. The evidence disclosed that the basis for the suspension was attempted solicitation of employment.

Counsel for the relator recommended permanent disbarment. This Board recommends that for the actions involved in this matter, a suspension from the practice of law for one year would be warranted.

Upon consideration of the prior iadefinite suspension of respondent from the practice of law in 1962 (Dayton Bar Association v. Herzog, 173 Ohio St. 313), his reinstatement in 1975, and the findings of misconduct by the Board in this case, the Board of Commissioners on Grievances and Discipline recommends, pursuant to the provisions of Section (7), Gov. R. V, that Respondent, H. J. T. Herzog, be permanently disbarred.

/s/
Chairman, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

/s/ COIT H. GILBERT
Secretary, Board of Commissioners
on Grievances and Discipline of
The Supreme Court of Ohio

THE STATE OF OHIO
City of Columbus

The Supreme Court of the State of Ohio
Of the Term of January, 1962
To-wit: Wednesday, April 18, 1962

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DAYTON BAR ASSOCIATION,

Relator,

v. No. DD26

H. J. T. HERZOG,

Respondent.

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**ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

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This cause came on to be heard upon the Objections by respondent to the Final Report of the Board of Commissioners on Grievances and Discipline and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the Objections to the Final Report of the Board of Commissioners are not well taken and should not be sustained for the reasons stated in the opinion filed herein.

It is further ordered and adjudged that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and the respondent, H. J. T. Herzog, is indefinitely suspended from the practice of law.

The respondent, H. J. T. Herzog, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to members in good standing of the legal profession of Ohio.

It is further ordered that the respondent, H. J. T. Herzog, surrender his Certificate of Admission to Practice to the Clerk of this Court on or before May 1, 1962 and that his name be stricken forthwith from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, H. J. T. Herzog, pay the costs of these proceedings taxed in the amount of One Hundred and Sixty Seven dollars and Eighty-Five cents ($167.85).

It is further ordered that a copy of this Entry be certified to the Respondent, to all counsel of record, to the Board of Commissioners on Grievances and Discipline, to the Dayton Bar Association, to the Presiding Judge of the United States District Court for the Southern District of Ohio and to the Presiding Judge of the Court of Common Pleas for Montgomery County, Ohio.

/s/ CARL V. WEYGANDT
CHIEF JUSTICE

THE STATE OF OHIO,
City of Columbus.

1975 TERM

To wit: June 19, 1975

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In re Petition for Reinstatement of
H. J. T. HERZOG

No. DD 26

**ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

This cause is before the court pursuant to Rule V, Section 26, of the Supreme Court Rules for the Government of the Bar of Ohio upon the report of the Board of Commissioners on Grievances and Discipline recommending the allowance of respondent's petition for reinstatement to the practice of law, which has been heretofore filed and duly referred to the Board for action.

All parties required by Section 22 (c) of said Rule V having received notice of the filing herein of the report and no objections to the recommendation having been filed, the report is confirmed and the petitioner is reinstated to the practice of law upon the payment of all costs of this proceeding including those costs incurred by the Board.

/s/ C. WILLIAM O'NEIL
Chief Justice

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ..... Page .....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 19th day of June 1975.

THOMAS L. STARTZMAN, Clerk.
By /s/ SAM F. ADKINS, Deputy.

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## APPENDIX C

STATE OF OHIO,
CITY OF COLUMBUS.

The Supreme Court of the State of Ohio
Of the Term of January, 1982.
To-wit: June 23, 1982.

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Dayton Bar Association,

Relator,

v.

H. J. T. Herzog,

Respondent.

**ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

DD No. 82-3

**ORDER**

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on February 1, 1982, recommending that the

respondent, H. J. T. Herzog, be permanently disbarred from the practice of law, pursuant to Section 6a of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that Respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued before the Court. On consideration thereof, it is ordered and adjudged by this court that the respondent, H. J. T. Herzog, be permanently disbarred from the practice of law pursuant to Section 6a of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

The respondent, H. J. T. Herzog, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, H. J. T. Herzog, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, H. J. T. Herzog, pay the costs of these proceedings taxed in the amount of Two Thousand Two Hundred Three Dollars and twenty-eight cents ($2,203.28).

It is further ordered that, on or before July 23, 1982, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of his disbarment and his consequent disqualification to act as an attorney after the effective date of this order, and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in his place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in possession or control of respondent;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of his disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. All notices required by this order shall be by certified mail and shall contain a return address where communications may thereafter be directed to respondent.

6. File with the Clerk of this Court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, and proof of service of notices required herein. Such affidavit shall also set forth the address where the affiant may receive com-

munications and the Clerk and Disciplinary Counsel shall be kept advised of any change of address;

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that the Clerk of this Court issue certified copies of this order as provided for in Section 20 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED: /s/FRANK D. CELEBREZZE
CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from Journal 58.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 23rd day of June, 1982.

THOMAS L. STARTZMAN CLERK

/s/ SAM F. ADKINS, DEPUTY

## APPENDIX D

## IN THE SUPREME COURT OF OHIO
## DISCIPLINARY DOCKET

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Dayton Bar Association, and
Leonard Stern—Disciplinary Counsel,
Relators,

-vs-

H.J.T. Herzog,
Respondent.

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CASE NO. 395 (DD 82-3)

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## NOTICE OF APPEAL

(Filed August 5, 1982)

Comes now the Respondent herein by counsel and gives notice that he appeals to the Supreme Court of the United States from the Decision and Order of this Court of June 23, 1982 wherby Respondent was permanently disbarred from the practice of law and Ordered to cease and desist from the same.

RESPECTFULLY SUBMITTED.

/s/HERBERT CREECH
Herbert Creech
Attorney for Respondent
7211 Taylorsville Road
Dayton, Ohio 45424
phone 237-5522

**CERTIFICATE OF SERVICE**

I certify that a copy hereof was sent by regular U.S. mail to the attorney for each Relator, respectively, this August 2, 1982.

/s/HERBERT CREECH

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**IN THE SUPREME COURT OF OHIO**
**DISCIPLINARY DOCKET**

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Dayton Bar Association, and
Leonard Stern—Disciplinary Counsel,
*Relators,*

-vs-

H.J.T. Herzog,
Respondent.

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CASE NO. 395 (DD 82-3)

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**AMENDED NOTICE OF APPEAL (IE., OF NOTICE TO SEEK WRIT OF CERTIORARI)**

(Filed September 7, 1982)

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Comes now Respondent by counsel and amends his originally filed "notice of appeal" made herein August 5,

1982 in the following particulars: that he is seeking from the United States Supreme Court the writ of certiorari and the statute upon which this petition for said writ is based jurisdictionally is 28 U.S.C. 1257 (3), and further, the original "notice" filed herein and the present notice of petition for certiorari are both timely, 28 U.S.C. 2101 (c), United States Supreme Court Rule 20 (2).

The writ of certiorari is sought as a means to have reviewed the June 23, 1982 Decision and Order of this Court whereby the Respondent was permanently disbarred from the practice of law and Ordered to cease and desist therefrom.

RESPECTFULLY SUBMITTED.

/s/ HERBERT CREECH
ATTORNEY FOR RESPONDENT
7211 TAYLORSVILLE ROAD
DAYTON, OHIO 45424
telephone 1-513-237-5522

CERTIFICATE OF SERVICE

I certify that a copy hereof was sent by regular United States mail to the attorney for each relator, respectively, 31 August 1982.

/s/ HERBERT CREECH, ESQUIRE